IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1489 of 1996

to

FIRST APPEAL No.1646 of 1996

with

CIVIL APPLICATION NOS.700 TO 857 OF 1997

with

CIVIL APPLICATION NO.3247 OF 1997

in

FIRST APPEAL No.1489 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

RAMCHANDDAS JANKIDAS

Appearance:

MR PG DESAI, GP, For the appellant in First Appeals

NOS.1489 to 1558 of 1996 with Civil Applications.
MR LR PUJARI, AGP, for the appellant in First Appeals Nos.1559 to 1602 of 1996 with Civil Appliations.
MR AJ DESAI, AGP, for the appellant in First Appeals Nos.1603 to 1646 of 1996 with Civil Applliations.
MR YATIN SONI, advocate for the respondents in all the fairst appeals and the Civil Applications.

Civil Application No.3247/97.
Mr YATIN SONI for the applicant.
Mr PG DESAI, GP, for the respondent.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE J.R.VORA
Date of decision: 03/01/98

CAV JUDGEMENT (Per J.R.Vora, J.)

This group of 158 first appeals under section 54 of the Land Acquisition Act, 1894 are directed against the common judgment and award passed by the Extra Assistant Judge, Rajkot district at Gondal in Land Reference Cases No.491 to 648/89.

2. As per the brief facts, houses and land attached to the houses of village Gadhethad of Upleta Taluka came to be acquired by the Land Acquisition Officer for Venu-II Irrigation Scheme. The constructed houses and the land of some other villages also came to be acquired for this scheme. Notification under section 4(1) of the Land Acquisition Act came to be published on 29th September, 1985 and notification under section 6 of the Land Acquisition Act came to be published on 15th October, 1987. Thereafter, as per section 11 of the Land Acquisition Act, the Special Land Acquisition Officer in Land Acquisition Case pronounced award on 17th March, 1988 by which he awarded an amount of Rs.200 per sq. mtr. in respect of the constructed area and Rs.1/- per sq. mtr. in respect of open land to the claimants. The claimants were also given alternative land by the Government for their rehabilitation. The claimants, thereafter, filed references under section 18 of the Land Acquisition Act before the District Court, Rajkot and in all 158 land references were filed for additional compensation.

3. Before the reference Court, the claimants claimed Rs.2000 per sq. mtr. for constructed area and Rs.25/per sq. mtr. for the open land. The reference Court after

recording evidence as adduced by both the sides, came to the conclusion that the compensation awarded by the Land Acquisition Officer for the open land i.e. Rs.1/- per sq. mtr. was reasonable because the claimants were given alternative land for rehabilitation. But the reference Court awarded additional amount to the extent of 35 per cent more on the award of Land Acquisition Officer. The reference Court has rejected the claim for enhancement of amount as regards open land and no appeal is filed lso far as the compensation awarded by the Land Acquisition Officer and approved by the reference Court. Therefore, the subject matter of these appeals is the compensation for the constructed area.

4. The reference Court, in its exercise of coming to this conclusion made a mute and weak attempt to appreciate the evidence on record, but it relied upon an award of the same reference court pronounced earlier in Land Reference Case No.329/89 and Land Reference Case No.283/89, which came to be decided by the Court of Extra Assistant Judge, Rajkot at Gondal on 19th December 1990 and 1st April 1991 respectively. In both these awards, the houses and lands of the claimants who were of village Rabarika were acquired by the Land Acquisition Officer for the same scheme and the Second Extra Assistant Judge awarded 35 per cent additional amount by way of compensation in both the above mentioned awards. In both these awards, the Second Extra Assistant Judge, Rajkot at Gondal, in turn, relied upon some other award passed by the Land Reference Court in earlier cases. Hence in the present reference cases, the learned Reference Court after relying on those awards awarded additional amount to the tune of 35 per cent.

5. Being aggrieved and dissatisfied by the award made by the Extra Assistant Judge, Rajkot at Gondal, all these appeals have been filed by the Government against the original claimants.

6. The learned Government Pleader and the learned advocate for the respondents were heard at length.

7. From the appellant side, following contentions were raised:

(a) That the reference were time barred and the reference Court ought to have dismissed the references.

(b) That the reference Court has erred in enhancing the amount of compensation to the tune of 35 per

cent because there is no basis for such an enhancement.

(c) That the learned Judge has failed to appreciate the evidence adduced by the Government in the cases and that the awards relied upon by the reference Court is not of a comparable unit.

8. On the other hand , Mr Soni, on behalf of the respondents has raised the following contentions:

(a) That the reference were made within six months from the date of the award and hence were filed within the limitation.

(b) That the learned Reference Court has relied upon an award of the same Court by which the constructed house and open land of village Rabarika and village Rajpara were acquired which were situated nearby village Gadhethad and therefore the enhancement to the tune of 35 per cent by the reference Court was reasonable and legal.

(c) That the claimants have deposed and have adduced evidence that the cost of construction of house was Rs.2000/- per sq. mtr. and hence the compensation be upwardly revised and enhanced to the tune of 100 per cent.

9. Having heard both the sides at length and after meticulous examination of the record, it clearly transpires that the learned reference Court fell into error in relying on the awards passed earlier by the same Court and in appreciating the evidence on record resulting in misgiving.

10. It is an established proposition of law that market value of the property which is acquired is to be assessed by the Court dealing with reference cases under section 18 of the Act. There are catena of decisions giving guidelines for arriving at the market value and we see no need to reiterate the principle which are well propounded. Section 23 of the Land Acquisition Act clearly establishes the factors to be taken into consideration at the time of assessing the market value of the property. Section 24 establishes the factors to be neglected in determining the compensation. Now, in the present case, instead of assessing the market value independently, the reference Court has relied upon an award passed by the same Court in earlier land reference

cases No.329/89 of 283/89 and in doing so, obviously, the reference Court was oblivious in appreciating the evidence on record. Undoubtedly, the awards which have become final can form a good guide and comparable instance unit. But it has to be borne in mind while deciding these appeals that these are the cases of acquisition of houses and not of land. The best available method for assessing compensation for the houses or the constructed area is to assess the cost of construction on the date of the notification under section 4(1) of the Land Acquisition Act or to find out a comparable sale instance. In the present case, though the earlier awards in Land Reference Cases No.329/89 and 283/89, by which houses of village Rajpara and village Rabarika were acquired for which the same reference Court enhanced the amount of compensation to the extent of 35 per cent were produced, it could not be shown that the houses which were acquired of Rabarika village and Rajpara village were of similar or of same nature and comparable to the houses of Gadhethad village which were acquired in the present case. Secondly, the awards made in Land reference Cases No.329/89 and 283/89, certified copies of which were produced on record at Ex.22 and 23, fail to provide the exercise of assessment by which enhancement of 35 per cent is arrived at. In both these awards at Ex.22 and 23, no reasons or a rational and logical base for enhancement of compensation to the tune of 35 per cent is mentioned, but, on the contrary, both these awards are based upon some earlier award in which enhancement of 35 per cent is awarded. The said award, which has been made base of the award passed and certified copies of which were placed at Ex.22 and 23, has not been placed on record and therefore this Court is in total darkness as to how the enhancement of 35 per cent was reached. Therefore, there is no rational and logical basis or evidence on record for enhancement of the compensation to the tune of 35 per cent. The awards relied on by the reference Court, as aforesaid, fails to provide any basis for the enhancement. Hence the reference Court fell into serious error in relying on the awards placed at Ex.22 and 23 while enhancing the compensation to the extent of 35 per cent. The conclusion for the enhancement arrived at by the reference Court, thus, is erroneous and requires to be set aside.

11. We are fortified by the decision of the Hon'ble Supreme Court in the case of Pal Singh vs. Union Territory of Chandigarh, reported in (1992) 4 SCC 400, in this respect and it was observed by the Hon'ble Supreme Court as under:

"But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land."

Relying on the aforesaid decision in a later decision in the matter of Karan Singh v. Union of India, as reported in (1997) 8 SCC at page 186, the Hon'ble Supreme Court observed that it is only the previous judgment of a Court or an award which can be made the basis for assessment of the market value of the acquired land subject to party relying on such judgment to adduce evidence for showing that due regard being given to all attendant facts then and then it could form the basis for fixing the market value of the acquired land. In this view of the matter, there is no evidence on record, as aforesaid, to show as to how a previous judgment and award justifies the enhancement of 35 per cent. It is the duty of the claimants to adduce evidence for showing due regard being given to all attendant facts of the case. But, in the present case, no such evidence has been adduced by the claimants and hence enhancement of 35 per cent awarded by the reference Court requires to be set aside.

12. The reference Court ought to have properly appreciated the evidence on record. Instead, the reference Court has made faint attempt to narrate the evidence on record without appreciating the same properly. The reference Court failed to appreciate the evidence on record because it placed reliance blindly on earlier award and hence we feel that we would be failing in our duty, as the first appellate Court, if we do not reappreciate the evidence on record. Primarily, needless to say that it is the duty of the claimants to prove their case for enhancement of compensation by adducing evidence. Heavy burden lies on the claimants to prove their case for enhancement of compensation. Now, in this case, the claimants have examined witness Vikramsinh Jetubha, vide Ex.10, witness Dilubha Jetubha, vide Ex.12, witness Gumansinh Natubha, vide Ex.13 and witness Ravtubha Pratapsing, vide Ex.14. No other oral or documentary evidence in support of the claim have been

adduced by the claimants. As aforesaid, these are the cases of acquisition of houses. Had it been the case of land, then the method of assessment of compensation would have been different. The market value of the houses can be ascertained by comparable sale instances or by arriving at the cost of construction on the date of the notification under section 4(1) of the Land Acquisition Act, as assessed by an expert. None of the 4 witnesses is an expert, but they are claimants. They have simply deposed that the cost of construction is Rs.2000/- per sq. mtr. in their village. An attempt by these witnesses has also been made that the houses are made of white stones and the price of white stones are Rs.2600/which are brought from outside and the transport charges also come to Rs.100/-. There is no evidence that how the amount of Rs.2000/- per sq. mtr. for construction is reached or claimed by the claimants. In fact, except the oral say to this extent, there is no evidence at all from the claimants side for assessing the cost of construction of the houses and therefore, the claimants have failed to prove the market value and cost of construction of the houses, let alone the enhanced or additional amount by way of cost of construction of houses. On the other hand, in these circumstances, the evidence adduced on behalf of the appellant-Government is required to be taken into consideration. On behalf of the Government, two witnesses have been examined. One witness is Amrish Chandrakant Acharya, vide Ex.27 and other is witness Dhirendra Hajabhai, vide Ex.29. Witness Amrish Chandrakant Acharya Ex.27, has deposed regarding the procedure for acquisition and so far as the assessment of cost of construction of the houses acquired is concerned, this witness is not useful. Other witness, Dhirendra Hajabhai Ex.29 is an Assistant Engineer in Venu-II scheme and he has deposed that the scheme was under one Mr.Patel who was the Deputy Engineer at the time of acquisition and who has died. This witness, had brought the original file of the acquisition and from the original file, he has produced one statement vide Ex.30, which was prepared by the then Executive Engineer, late Mr Patel. It is established by his evidence that the Deputy Engineer Mr Patel had classified the houses in categories and according to category as per the prevailing S.O.R. the cost of construction was decided and accordingly, compensation to the claimants were awarded by the Land Acquisition Officer. Ex.30 is very important in the adjudication of the cost of construction and the compensation. Vide Ex.30, as per the prevailing S.O.R. on the date of the notification under section 4(1) of the Act the cost of the construction was decided by an expert who was dead at the time of evidence. There

is nothing on record to disbelieve the cost of construction arrived at by the then Deputy Engineer late Mr Patel, who was an expert. A vain attempt has been made by the claimants in the cross-examination to show that since the Deputy Engineer late Mr Patel was an employee of the Government, his assessment cannot be believed and secondly the age of the houses mentioned in Ex.30 is not properly mentioned. Witness Dhirendra Hajabhai has amply made it clear that the age of the houses in the statement at Ex.30 has been decided as per the information received from the claimants and therefore, merely because witness Dhirendra Hajabhai has no personal knowledge or merely because the age of the houses in Ex.30 has been mentioned according to the information given by the claimants, the evidence of Ex.30 or the evidence of Dhirendra Hajabhai cannot be brushed aside. In our humble opinion, the evidence of witness Dhirendra Hajabhai, Ex.29, and documentary evidence at Ex.30 is the only evidence available on record to properly adjudicate the claims of the claimants in all the reference cases. The evidence of Dhirendra Hajabhai and Ex.30 is not even impeached in the cross examination or nothing could be shown to controvert the cost of construction arrived at by the then Deputy Engineer late Mr Patel. On the contrary, in cross-examination on behalf of the claimants, Ex.30 has been referred, but nothing has been elicited from witness Dhirendra Hajabhai by the claimants side to disbelieve the evidence of Ex.30 and therefore on one side the claimants have failed to prove by evidence their claim for enhancement while on the other side, the Government has established by evidence that the compensation awarded for the constructed houses by the Land Acquisition Officer is based on the cost of construction as arrived at by an expert as per prevailing S.O.R. which is the method universally recognised and accepted in civil engineering field.

13. In this view of the discussion, we are unable to prop the award passed by the Extra Assistant Judge, Rajkot at Gondal in reference case No.491/89 to 648/89. We are unable to accept the contention of Mr Soni on behalf of the claimants that the compensation is required to be enhanced to 100 per cent in absence of cross objections or cross appeals or in absence of any evidence for enhancement on behalf of the claimants on record, in our discretionary jurisdiction. Learned advocate Mr Soni on behalf of the claimants argued regarding appeals of petty amounts and he solicited that this Court in number of matters has come to the conclusion that appeals filed by the Government against petty amount of compensation be

not entertained. We are unable to accept this contention also of Mr Soni, because the reason for not entertaining the appeals where petty amount is awarded was that poor farmers and villagers may not have to go through the rigmarole of the procedure of appeals and incur unnecessary expenditure. While, in the present case, first appeals are admitted and all the respondents are before this Court. Further, the facts and circumstances of these cases are altogether different, as aforesaid, because these are cases of acquisition of houses for which by a legal and recognized method after assessing of cost of construction, the Land Acquisition Officer has awarded the amount of compensation and in no case the claimants are entitled to enhancement of 35 per cent. We are very much conscious about the aims and objects of the Land Acquisition Act that the property of any citizen when compulsorily acquired by the State, he must be compensated adequately and without feeling in the mind of the citizen that he has not been compensated worth his property compulsorily acquired. In these cases, it clearly transpires from the evidence that the Government has taken sufficient care and after careful exercise of assessing the cost of construction through available and recognized methods by experts, the amount of compensation is fixed which is in no way unreasonable or unjust.

14. So far as the contention of the Government regarding limitation is concerned, the reference Court has rightly rejected the plea of the Government. As per section 18(2) of the Land Acquisition Act, reference is required to be made before the District Court against the award of the Collector within six weeks if the person making the reference was present or represented before the Collector. But this is not the case here. It is not the case of the Government that the claimants were present when the Land Acquisition Officer pronounced the award. Sub-section (b) of section 18(2) of the Act further clarifies that in other cases, the claimant is required to make reference within six weeks of the receipt of the notice from the Collector under section 12(2) of the Act or within six months from the date of Collector's award whichever period shall first expire. In this case, the Government has not established that a notice under section 12(2) was served upon the claimants with the contents of the award and therefore, the question of filing reference within six weeks from the date receipt of the notice under section 12(2) of the Land Acquisition Act does not arise. Then clause of section 18 which applies to these cases for the purpose of limitation is that the reference ought to have been filed within six months from the date of the Collector's award. The award

of the Land Acquisition Officer is dated 17.3.88 and the claimants have filed the Land reference cases on 8th August, 1988 and thus, the claimants have filed the references within six months from the date of the award of the Land Acquisition Officer and, therefore, the reference Court has rightly believed that the references are made within the time limit prescribed by section 18 of the Land Acquisition Act.

15. In the result, except the contention regarding limitation, the first appeals filed by the Government are required to be allowed and the common judgment and award passed by the Extra Assistant Judge, Rajkot, at Gondal in Land Reference Cases No.491/89 to 648/89 is required to be set aside. Accordingly, the appeals are allowed and the award passed by the Extra Assistant Judge, Rajkot, at Gondal in Land Reference Cases No.491/89 to 648/89 is set aside. In this view of the matter, no order is required to be passed in the Civil Applications filed by the respondents. If any amount is deposited by the appellant in pursuance of any interim order or any earlier order passed by this Court, then the same shall be returned to the Government. We leave the parties to bear their own costs.

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